



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-HQ-OAR-2011-0151; FRL-9911-46-OAR]

RIN 2060-AS24

Review of New Sources and Modifications in Indian Country Amendments to the Registration and Permitting Deadlines for True Minor Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing final amendments to the “Federal Minor New Source Review Program in Indian Country” (we refer to this new source review rule as the “Indian Country Minor NSR Rule”). We are amending the Indian Country Minor NSR Rule in two ways. First, we are extending the NSR minor source permitting deadline for true minor sources in the oil and natural gas sector from September 2, 2014, to March 2, 2016. Second, we are changing the registration deadline for new true minor sources in the oil and natural gas sector to conform with the changes to the NSR minor source permitting deadline. We are also eliminating a requirement for all true minor sources that begin operation before September 2, 2014, to obtain a minor NSR permit 6 months after EPA publishes a general permit because the provision no longer affects any source.

DATES: The final rule is effective on *[insert date 30 days after date of publication in the Federal Register]*.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2011-0151. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not

publicly available e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For general questions about this document, please contact Mr. Christopher Stoneman, Outreach and Information Division, Office of Air Quality Planning and Standards (C304-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0823; fax number (919) 541-0072; email address: stoneman.chris@epa.gov. For questions about the applicability of this action to a particular source, please contact the appropriate EPA region contact for your state:

EPA Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas) – Ms. Bonnie Braganza, Air Permits Section, Multimedia Permitting and Planning Division, Environmental Protection Agency Region 6, Dallas, Texas 75202; telephone number (214) 665-7340; fax number (214) 665-6762; email address: braganza.bonnie@epa.gov.

EPA Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming) – Ms. Claudia Smith, Air Program, Mail Code 8P-AR, Environmental

Protection Agency Region 8, Denver, Colorado 80202; telephone number (303) 312-6520; fax number (303) 312-6649; email address: *smith.claudia@epa.gov*.

EPA Region 9 (Arizona, California, Hawaii, Nevada, and Pacific Islands) - Ms. Lisa Beckham, Permits Office, Air Division, Air-3, Environmental Protection Agency Region 9, San Francisco, California 94105; telephone number (415) 972-3811; fax number (415) 947-3579; email address: *beckham.lisa@epa.gov*.

All other EPA regions - The permit reviewer for minor sources in Indian country for your EPA region. You can find the list of the EPA permit reviewers at <http://www.epa.gov/air/tribal/tribalnsr.html>. Scroll down to the heading, “Existing Source Registration,” and click on “Reviewing Authority” to access “Environmental Protection Agency’s Reviewing Authorities for Permits.”

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this final rule include owners and operators of true minor emission sources in all industry groups planning to locate or already located in Indian country. Categories and entities potentially affected by this action are expected to include, but are not limited to, the following:

Category	NAICS ^a	Examples of regulated entities
Industry	21111	Oil and gas production/operations
	211111	Crude petroleum and natural gas extraction
	211112	Natural gas liquid extraction
	212321	Sand and gravel mining
	213111	Drilling oil and gas wells
	213112	Support activities for oil and gas operations

22111	Electric power generation
221210	Natural gas distribution
22132	Sewage treatment facilities
23899	Sand and shot blasting operations
311119	Animal food manufacturing
3116	Beef cattle complex, slaughter house and meat packing plant
321113	Sawmills
321212	Softwood veneer and plywood manufacturing
32191	Millwork (wood products manufacturing)
323110	Printing operations (lithographic)
324121	Asphalt hot mix
3251	Chemical preparation
32711	Clay and ceramics operations (kilns)
32732	Concrete batching plant
3279	Fiber glass operations
331511	Casting foundry (iron)
3323	Fabricated structural metal
332812	Surface coating operations
3329	Fabricated metal products
33311	Machinery manufacturing
33711	Wood kitchen cabinet manufacturing
42451	Grain elevator
42471	Gasoline bulk plant
4471	Gasoline station
54171	Professional, scientific, and technical services
562212	Solid waste landfill
72112	Casino hotels
811121	Auto body refinishing

^a North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be subject to the Indian Country Minor NSR Program, and, therefore, potentially affected by this action. To determine whether your facility is affected by this action, you should examine the applicability criteria in 40 CFR 49.151 through 49.161 (i.e., the Indian Country Minor NSR Rule). If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**.

B. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr> and on the tribal NSR page at <http://www.epa.gov/air/tribal/tribalnsr.html>.

II. Purpose

In July 2011, EPA finalized a rule that includes a minor new source review NSR permitting program for sources in Indian country. We call the minor source permitting part of the rule: The “Indian Country Minor NSR Rule.”¹ We call a permit issued under this program a minor NSR permit. Under the rule issued in 2011, new and modified minor sources and major sources that make minor modifications, located in Indian

¹ The Indian Country Minor NSR Rule is a component of “Review of New Sources and Modifications in Indian Country, Final Rule” July 1, 2011 (76 FR 38748) that applies to new and modified minor sources and minor modifications at major sources. It is codified at 40 CFR 49.151 – 49.161.

country, must obtain a permit prior to commencing construction (a pre-construction permit) beginning on September 2, 2014.

The purpose of today's rulemaking is to finalize the following two amendments to the Indian Country Minor NSR Rule:

- 1) Extend the minor NSR permitting deadline for true minor sources in the oil and natural gas sector located, or planning to locate, in Indian country; and
- 2) Adjust the registration deadline to conform to the extended permitting deadline for true minor sources in the oil and natural gas sector; and
- 3) We are also eliminating a requirement for all true minor sources that begin operation before September 2, 2014, to obtain a minor NSR permit 6 months after EPA publishes a general permit. No general permits have been finalized to date, so the provision is now moot.

III. Background

A. Proposed Amendments to the Indian Country Minor NSR Rule

On January 14, 2014, EPA published a proposed rule, "General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,"² that included proposed amendments to §49.151(c)(1)(iii)(B) and §49.160(c)(1)(ii) and (c)(1)(iii) of the Indian Country Minor NSR Rule. Two of the proposed amendments affect only true minor sources in the oil and natural gas sector: (1) the extension of the deadline by which true minor sources in the oil and natural gas sector must receive minor NSR permits prior to commencing construction; and (2) the deadline by which true minor

² The "General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country" was proposed on January 14, 2014 (79 FR 2546). Proposed changes to the Indian Country Minor NSR rule are on pages 79 FR 2570-2572.

sources in the oil and natural gas sector must register. The third proposed amendment would affect all true minor sources by eliminating the requirement to obtain a permit beginning 6 months after EPA publishes a general permit for a source category in the **Federal Register**, if that date is before September 2, 2014.

EPA proposed other changes to the Indian Country Minor NSR Rule in the “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country.” These other proposed changes are not part of today’s final rule and will be addressed in a separate final rulemaking.

EPA also proposed amendments to the Indian Country Minor NSR Rule in the proposed rule, “Review of New Sources and Modifications in Indian Country - Amendments to the Indian Country Minor New Source Review Rule,” published in the **Federal Register** on June 4, 2013 (78 FR 33266). These proposed amendments addressed the list of emissions units and activities that are exempt from the Indian Country Minor NSR Program and definitions of “commence construction” and “begin construction.” We finalized these amendments in a final rule published in the **Federal Register** on May 30, 2014 (79 FR 31035).

B. How Might EPA Streamline NSR Permitting for True Minor Sources in the Oil and Natural Gas Sector?

When we proposed the extension of the permit deadline for true minor sources in the oil and natural gas sector, we explained that an extension of the deadline was necessary, in part, because of the additional time required to appropriately address issues associated with this sector. To begin the process of addressing these issues, EPA published an Advance Notice of Proposed Rulemaking (ANPR) to solicit broad feedback

on the most effective and efficient means of implementing the Indian Country Minor NSR Rule for new and modified true minor sources and minor modifications at major sources in the oil and natural gas sector located in Indian Country.³ In particular, the ANPR discusses various approaches, including a federal implementation plan (FIP), which would establish requirements for new and modified true minor sources and minor modifications at major sources (and possibly existing sources as well); and a general permit, which would establish a streamlined permitting approach for new and modified minor sources and minor modifications at major sources under the Indian Country Minor Source NSR Rule. EPA is also seeking feedback on other possible approaches such as a permit by rule.

After considering feedback received in response to the ANPR,⁴ EPA intends to propose action on regulating new and modified true minor sources and minor modifications at major sources, and possibly also existing sources of oil and natural gas production operations in Indian country, in a way that: (1) ensures the timely implementation of environmental protections; (2) maximizes the efficient use of resources; (3) minimizes preventable delays in economic development; and (4) proactively mitigates potential adverse air quality-related environmental and public health impacts that could result from the rapid growth in emissions from these sources.

IV. What Final Action is EPA Taking on Amendments to the Indian Country

Minor NSR Rule?

³ See 79 FR 32502, published on June 5, 2014.

⁴ Electronic copies of the ANPR are available in the docket and in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr>.

Today's final rule promulgates three amendments to the Indian Country Minor NSR Rule. This section discusses those three amendments and our rationale for adopting them.

This final rule amends §49.151(c)(1)(iii)(B) in two ways. First, we are eliminating the requirement to obtain a permit beginning 6 months after the general permit for a source category is published in the **Federal Register**, if that date is before September 2, 2014. The purpose of this provision was to ensure that sources would obtain preconstruction permits as soon as practicable after a general permit had been issued rather than waiting until September 2, 2014. However, today's date is fewer than 6 months from September 2, 2014, making the provision unnecessary. Eliminating it de-clutters and clarifies the regulatory text.

Second, we are extending the permitting deadline for all true minor sources (both new and modified true minor sources and minor modifications at existing major sources) within the oil and natural gas sector located in Indian country.⁵ Today's final rule changes the deadline from September 2, 2014, to March 2, 2016, for true minor sources in the oil and natural gas sector that either begin new construction or modifications to an existing source on or after that date.

This final rule also amends a provision in the Indian Country Minor NSR Rule governing existing minor source registration timeframes (§49.151(c)(1)(iii)(A)) to conform to the changes to the registration date that we made to another provision in the

⁵ Typically, sources in the oil and natural gas sources sector will be assigned to one of the following NAICS codes: 21111 Oil and gas production/operations; 211111 Crude petroleum and natural gas extraction; 211112 Natural gas liquid extraction; 21311 Drilling oil and gas wells; 213112 Support activities for oil and gas operations; and 221210 Natural gas distribution.

Indian Country Minor NSR rule on the same topic (§49.160(c)(1)(ii) and (c)(1)(iii)) and to eliminate redundant text that addresses the effective date of the Indian Country Minor NSR Rule. We did not propose either change, but had intended to make the changes we proposed throughout the regulatory text to ensure consistency. The first change to §49.151(c)(1)(iii)(A), which addresses the registration date for true minor sources in Indian Country, is necessary to ensure consistency with the changes we proposed in §49.160(c)(1)(ii) and (c)(1)(iii). Without the change in §49.151(c)(1)(iii)(A), the regulatory text would have conflicting requirements. The second change in §49.151(c)(1)(iii)(A) eliminates “you must register your source with your reviewing authority in your area within 18 months after the effective date of this program, that is.” This change eliminates unnecessary existing regulatory text and does not change any requirements.

Today’s final rule also amends §49.160(c)(1)(ii) and (c)(1)(iii) to make registration deadlines consistent with the minor NSR permitting deadline for true minor sources in the oil and natural gas sector. The Indian Country Minor NSR Rule currently requires true minor sources that commence construction between August 30, 2011, and September 2, 2014, to register with the appropriate reviewing authority within 90 days after the source begins operation. If a source commences construction or modification on or after September 2, 2014, its permit application fulfills the registration requirement. Today’s rule changes the September 2, 2014, date to March 2, 2016, for true minor sources in the oil and natural gas sector, thereby extending the period during which sources in the oil and natural gas sector must register.

V. Summary of Significant Comments and Responses

We received comments from 28 commenters (twelve tribes or tribal entities, two state or local agencies, and fourteen industry entities) overall on the “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country” proposed rule. The subsections that follow provide a summary of the comments, and our responses to those comments, that relate to the changes discussed in Unit IV. and that we are addressing in today’s final rule. The remainder of the comments will be addressed as part of a separate final rule that relates to the general permits (or permits by rule) and other changes to the Indian Country Minor NSR Rule proposed in the “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country” proposed rule.

A. Consultation with Tribal Governments

Comment: One commenter stated that much of EPA’s proposed rule violated Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments and EPA’s May 2011 Policy on Consultation and Coordination with Indian Tribes.

Response: The EPA coordinated with tribal environmental professionals on the development of the “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country” proposed rule, including the proposed amendments to extend the permitting and registration deadlines for true minor sources in the oil and natural gas sector located in Indian country. The coordination consisted of participating in monthly teleconferences. Specifically, on December 19, 2013, we presented an overview of the proposal and welcomed feedback and questions. On March 4, 2014, we met with representatives of the Ute Indian Tribe to hear their concerns

regarding the proposed rule.

On December 16, 2013, EPA mailed letters to over 600 tribal leaders to offer consultation. To assist tribes in deciding whether to accept our offer of consultation, we held a conference call on January 6, 2014, during which EPA provided an overview of the proposed changes and answered questions. We did not receive any requests for consultation from tribal governments in response to our letters offering consultation. However, prior to mailing the consultation letters, EPA began consulting with two tribes. Senior EPA officials consulted with the elected Ute Indian Tribe tribal leader and other members of the Ute Indian Tribe, including business committee members, on August 27, 2013, September 12, 2013, and March 21, 2014. Senior EPA officials also consulted with the designated representatives of the elected leaders of the Ute Indian Tribe and the Three Affiliated Tribes on July 26, 2013.

B. Removing the Requirement to Obtain a Permit Beginning 6 months After the Publication Date of a General Permit

Comment: Two commenters supported eliminating the 6 month requirement, noting that the general permits have not been published, and cannot be finalized prior to 6 months before September 2, 2014. One commenter also noted that the change clarifies that September 2, 2014, is the applicable permitting deadline.

Response: For the reasons explained in this document, this final rule eliminates the requirement.

C. Extending the True Minor Source Permitting Deadline of the Indian Country Minor NSR Rule for True Minor Sources in the Oil and Natural Gas Sector

1. Extension Date

Comment: No commenters opposed extending the true minor source permitting deadline for the Indian Country Minor NSR Rule, although two commenters did express concerns about how the extension would affect air quality. Sixteen commenters supported an extension, citing the need for a streamlined approach to permitting minor sources in the oil and natural gas sector.

One commenter noted that an extension of the deadline is reasonable, given the complexity of the oil and natural gas sector. Another commenter noted that without an extension, companies will have to get individual permits for every facility. One commenter stated that if oil and natural gas sources have to obtain site-specific permits before commencing construction, the delays could have “profoundly negative effects on the Tribe’s mineral estate, its economy and its ability to fund the tribal government,” which could affect the tribal government’s ability to provide “much needed social services to its tribal members.” Other commenters stated that obtaining site-specific permits for true minor sources in the oil and natural gas sector would cause significant and harmful delays due to the resources required to prepare and submit permit applications and the inability of the EPA to review and issue permits in a timely manner. One commenter noted that “EPA will be inundated with hundreds, maybe thousands, of permit applications” and has “insufficient staff to review and approve” these permits. Another commenter noted that the number of applications for minor source permits would “overwhelm EPA’s limited resources and likely lead to unrealistic lead times and increased uncertainty for sources seeking permits.” Another commenter stated that even if a general permit was proposed soon for the oil and natural gas sector, five-and-a-half months lead time is not enough for companies to make control decisions and equipment

purchases, which often involve waiting lists or require testing to assure controls will work in specific locations.

One commenter stated that EPA should not pick an arbitrary fixed future date for the permitting deadline. Several commenters asked EPA to set the deadline for permitting as a conditional date, i.e., a date 12 months from the publication date or effective date of the general permit for a source category. Commenters were concerned about EPA's ability to issue a final general permit by March 2, 2016. One commenter stated that if a deadline of March 2, 2016, does not provide enough time for EPA to issue a general permit or permit by rule, we "could end up in the same predicament we find ourselves in today," with no general permit or permit by rule in place and a fast-approaching deadline. One commenter noted that it makes no sense to have an effective date until a general permit or permit by rule is issued and effective for a sector.

One commenter requested that EPA allow adequate lead time between the date a final oil and natural gas sector general permit, or permit by rule, is published and the permitting deadline. One commenter noted that 12 months would give oil and natural gas operators sufficient time to read and understand the general permit, or permit by rule, and to prepare hundreds of individual permit applications.

Response: We are aware that EPA's ability to review and issue minor NSR permits for the oil and natural gas sector would be strained without a streamlined approach to permitting for true minor sources in the oil and natural gas sector. We are also aware that delays in issuing permits can be costly to industry and to tribes. To help address these concerns, we are developing a streamlined approach to permitting minor sources in the oil and natural gas sector. As discussed in Unit III.B., we published an

ANPR that addresses various aspects of permitting oil and natural gas sources and requests comment from the public on how EPA might best apply federally enforceable limits that protect air quality in Indian country and minimize potentially costly delays.

Following the ANPR, EPA will develop a notice of proposed rulemaking and a final rule. A permitting deadline prior to March 2, 2016, does not allow sufficient time to propose and promulgate a general permit, FIP, or other possible approach (i.e., a permit by rule) for sources in the oil and natural gas sector. However, a deadline date of March 2, 2016, should provide sufficient time for us to complete the regulatory development process and to finalize a streamlined approach for addressing the potential impact of true minor sources in the oil and natural gas sector. Therefore, today's final rule is extending the permitting deadline for true minor sources in the oil and natural gas sector to March 2, 2016.

We do not believe that an open-ended extension of the permit deadline is appropriate for a number of reasons. First, while we believe that an extension of the permitting deadline is necessary in practical terms for the successful implementation of the minor source permitting program for oil and natural gas sources, this means that a true minor source in the oil and natural gas sector that begins construction before March 2, 2016, will not be required to have an NSR permit. We recognize that the extended period of time true minor sources in the oil and natural gas sector will be able to construct without first obtaining an NSR permit could have a negative impact on air quality in Indian country. We believe that establishing a date of March 2, 2016, as the date by which true minor sources must obtain an NSR permit prior to commencing construction will help to minimize any such impacts. A nonspecific deadline conditional on the timing

of publication in the **Federal Register** of a general permit could exacerbate any such impacts. Second, an open-ended extension would not provide the certainty that industry representatives have consistently said they need in order to make informed decisions regarding the purchase and locating of equipment. Third, one of the reasons commenters asked EPA for a conditional permitting deadline is the amount of lead time they said sources require to develop permit applications. When public comments were submitted, EPA had not published the ANPR, which discusses the possibility of issuing federally enforceable requirements using a FIP instead of a general permit for true minor sources in the oil and natural gas sector in Indian country. As discussed in the ANPR, an oil and natural gas production FIP would apply directly by regulation and would authorize construction or modification of sources complying with the requirement; sources would not need to submit a permit application or obtain coverage under a permit. This would mean that a source in compliance with the FIP could begin construction at any point after meeting notification requirements, potentially eliminating the need for significant lead time. If EPA issues a general permit or follows another approach instead of a FIP for minor sources in the oil and natural gas sector, then we will take into consideration the need for lead time.

2. Source Categories and Sources in the Oil and Natural Gas Sector Subject to the Permitting Deadline Extension

Comment: Several commenters stated that the permitting deadline extension should apply to all true minor sources at oil and natural gas facilities. One commenter further specified that the permitting deadline extension should apply to glycol dehydrators, compressor stations, natural gas processing plants, and any other gas

gathering facilities. Another commenter linked the equipment covered by a general permit to equipment covered by the extension deadline and stated that the general permit should be for storage tanks, dehydrators, and compressor stations. One commenter stated that the permitting deadline extension should include gas gathering activities and asked that the EPA clarify the NAICS code that includes oil and gas gathering activities. One commenter stated that a general permit for stationary engines would be especially relevant for facilities in the oil and gas industry. The commenter also stated that it “makes no sense to make the program effective for the oil and gas industry until after a general permit or permit by rule has been issued and is effective for . . . all source types used in that sector.”

Several commenters stated that EPA should provide a permitting extension to true minor sources in all source categories.

Response: EPA agrees with the commenters that the permitting extension should apply to all affected emissions units that are located at a true minor source in the oil and natural gas sector.⁶ An affected emissions unit, such as a boiler or an internal combustion engine, does not have to be exclusive to the industry, but it must be necessary for, and used in conjunction with, the extraction, production, processing, storage, transmission or distribution of oil or natural gas to be part of the oil and natural gas sector. We decided to apply the extension to all affected emissions units at true minor sources in the oil and natural gas sector because we have yet to determine which affected emissions units will be covered by a general permit, FIP or other approach. Before we decide in a subsequent

⁶ “Affected emissions units” is defined in the definitions section (§49.152) of the Indian Country Minor NSR Rule.

notice of proposed rulemaking which affected emission units we want to propose to be covered, we want to consider the public comments received on a host of issues outlined in the ANPR. We expect that most affected emissions units at true minor sources in the oil and natural gas sector will be covered by one of the approaches outlined in the ANPR or which come to light in comments received on the ANPR; however, we believe it best to extend the deadline for all affected emissions units at true minor sources in the oil and natural gas sector until we determine exactly which affected emissions units will be covered.

EPA is not extending the permitting deadline for all true minor sources because we do not believe an extension is warranted for other source categories. If general permits, or permits by rule, are not in place for other source categories by September 2, 2014, we would issue site-specific permits for the sources in those source categories that seek minor source permits during what we anticipate to be a short period of time between that date and the date when general permits or permits by rule are available.⁷ We believe that the time during which the issuance of site-specific permits may be necessary will be short because we have proposed general permits, or permits by rule, for five source categories in Indian country and expect to propose additional general permits, or permits by rule, later this year.

⁷ We are basing our sense of the number of potential sources in other source categories on information from two sources. First, it is based on the mix of existing minor sources that registered with EPA in response to the March 2013 deadline. The number of oil and natural gas sources that have registered far outweighs the number of sources that have registered in other source categories. Second, EPA's projections of minor source growth in Indian country also indicates far higher growth in oil and natural gas sources versus sources in other categories. A copy of the economic analysis can be found in the following docket: Docket ID No. EPA-HQ-OAR-2011-0151.

For the purposes of the permitting and registration deadlines, as specified in §§49.151(c)(1)(iii)(A) and (c)(1)(iii)(B), and 49.160(c)(1)(i) through (c)(1)(iii), for true minor sources, an “oil and natural gas source” is part of the oil and natural gas sector. The oil and natural gas sector encompasses all operations in the extraction and production of oil and natural gas, as well as the processing, transmission and distribution of natural gas. Specifically for oil, the sector includes all operations from the well to the point of custody transfer at a petroleum refinery. For natural gas, the sector includes all operations from the well to the final end user. The oil and natural gas sector can generally be separated into four segments: (1) oil and natural gas production; (2) natural gas processing; (3) natural gas transmission and storage; and (4) natural gas distribution.

The oil and natural gas production segment includes the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil and/or natural gas (including condensate). Production components may include, but are not limited to, wells and related casing head, tubing head and “Christmas tree” piping, as well as pumps, compressors, heater treaters, separators, storage vessels, pneumatic devices and dehydrators. Production operations also include the well drilling, completion and workover processes and include all the portable non-self-propelled apparatus associated with those operations. Production sites include not only the sites where the wells themselves are located, but also include stand-alone “pads” where oil, condensate, produced water, and natural gas from several wells may be separated, stored, and treated. The production segment also includes the low to medium pressure, smaller diameter, gathering pipelines and related components that collect and transport the oil, natural gas and other materials and wastes from the wells or

well pads. We believe most true minor sources in the oil and natural gas sector that will need a minor NSR permit are in the oil and natural gas production segment.

The natural gas production segment ends where the natural gas enters a processing plant. In situations where there is no processing plant, the natural gas production segment ends at the point where the natural gas enters the transmission segment for long-line transport. The crude oil production segment ends at the storage and load-out terminal which is used for transport of the crude oil to a petroleum refinery via trucks or railcars. The petroleum refinery is not considered a part of the oil and natural gas sector. Thus, with respect to crude oil, the oil and natural gas sector ends where crude oil enters the petroleum refinery.

The second segment, natural gas processing, consists of separating certain hydrocarbons and fluids from the natural gas to produce “pipeline quality” dry natural gas. Pipeline quality natural gas leaves the natural gas processing segment and enters the third segment, natural gas transmission and storage, which includes pipelines, reciprocating or centrifugal compressors, and underground storage facilities. The fourth segment is the natural gas distribution segment. Local distribution companies comprise the natural gas distribution segment and deliver natural gas to the final end user. As explained earlier in this comment response, we believe that most true minor sources that will need a minor NSR permit will be in the oil and natural gas production segment.

3. Protection of Air Quality in Indian Country During the Period of the Extension

Comment: One commenter expressed concern that extending the permitting deadline may provide yet additional time for oil and natural gas sources to commence new operations or make modifications to existing sources without a permit. The

commenter noted that the oil and gas sector is one of the most prolific sources in some areas of Indian country and it might not be beneficial to have so many unpermitted sources during the extension period. Another commenter asked how EPA will protect air quality in Indian country during the period of the extension.

Response: EPA recognizes that extending the minor NSR permitting deadline for the oil and natural gas sector could have negative impacts on air quality in Indian country, because some sources will not have to install air pollution controls that might otherwise have been required. Such impacts should be minimized, because many new, modified and reconstructed sources in Indian country will have to meet the requirements of the Agency's oil and natural gas New Source Performance Standard (NSPS).⁸ The NSPS covers most emission sources in the production segment of the oil and natural gas sector, including completions of hydraulically fractured gas wells, storage vessels, compressors, and pneumatic controllers. Sources constructed, modified or reconstructed after August 23, 2011, must comply with the requirements of the NSPS. The NSPS will be fully implemented in 2015. Thus, the NSPS will help protect air quality during the extension. Moreover, the permitting extension applies only to true minor sources; the requirement that major sources and synthetic minor sources obtain pre-construction permits in Indian country is not affected.

EPA does not have the necessary resources to deal with the anticipated number of site-specific permit applications that would be submitted between the current September 2, 2014, deadline and the date by which we are able to issue a FIP, general permit or

⁸ See 40 CFR part 60, subpart OOOO, "Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution."

other streamlined mechanism for the permitting of true minor sources in the oil and natural gas sector. This could result in significant delays in construction of oil and natural gas sources in Indian country. Commenters representing both tribes and industry expressed concerns about the negative impacts of delays in obtaining permits.

The permitting extension also gives us an opportunity to coordinate among all of the ongoing efforts to better manage the regulatory challenges posed by this large, rapidly growing, complex sector. Three activities are highlighted here. First, as previously mentioned, we have promulgated an NSPS regulation for this source category⁹ that applies directly to new, modified, and reconstructed sources in the industry and requires emission controls for some sources. These requirements are independent of any NSR permit. Second, on April 15, 2014, we released several technical white papers for peer review that address emerging data on volatile organic compounds and methane emissions from certain sources in the oil and natural gas sector, as well as techniques for mitigating those emissions.¹⁰ These white papers, and the comments they elicit, will help us solidify our understanding of the sector and will help inform future policy decisions as we consider potential voluntary and regulatory approaches. Third, we are working to improve our emissions inventory and emissions factors for the oil and natural gas sector. These improvements will allow us to better assess the potential impacts of increased production.

An extension to the permitting deadline also gives us time to evaluate public comments on the ANPR (discussed in Unit III.), including comments that address

⁹ See 40 CFR part 60, subpart OOOO, “Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution.”

¹⁰ The white papers can be found at <http://www.epa.gov/airquality/oilandgas>.

whether EPA should cover existing sources in an oil and natural gas FIP. Covering existing oil and natural gas sources in a FIP, if we decide to do so, could allow us to better manage emissions increases in those areas of Indian country that exceed, or are close to exceeding, the ozone National Ambient Air Quality Standards (NAAQS) because of emissions from the oil and natural gas sector. This could also ensure greater consistency with the requirements in minor NSR permits previously issued by surrounding states.

D. Registration

Comment: Two commenters supported the proposed change to the registration date for true minor sources in the oil and natural gas sector. We did not receive any adverse comments on the proposed change.

Response: We changed the registration date for true minor sources in the oil and natural gas sector to be consistent with the permitting deadline of March 2, 2016.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order

13563: Improving Regulation and Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The action will not create any new requirements under the Indian Country Minor NSR Program, but rather

extends permitting and registration deadlines for true minor sources in the oil and natural gas sector, potentially reducing burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations for the Indian Country Minor NSR Program (40 CFR 49.151 through 49.161) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0003. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this final action on small entities, small entity is defined as: (1) a small business as defined in the U.S. Small Business Administration size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final action on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact

on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule.

This final action will not create any new requirements under the Indian Country Minor NSR Program. It merely extends the permit and registration deadlines for true minor sources in the oil and natural gas sector in Indian country. Therefore, it would not impose any additional burden on any sources (including small entities). We have therefore concluded that this final rule will be neutral or relieve the regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local or tribal governments in the aggregate, or the private sector in any 1 year. This action will not create any new requirements under the Indian Country Minor NSR Program, but rather extends the permitting and registration deadlines for true minor sources in the oil and natural gas sector in Indian country. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect

small governments. As noted previously, the effect of this final rule will be neutral or relieve regulatory burden.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule will revise the Indian Country Minor NSR Program, which applies only in Indian country, and will not, therefore, affect the relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal

Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this final rule will have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. This final rule will have tribal implications since it revises the Indian Country Minor NSR Program, which applies to both tribally-owned and privately-owned sources in Indian country. As with the existing rule, the revised rule will be implemented

by EPA, or a delegate tribal agency assisting EPA with administration of the rules, until replaced by an EPA-approved tribal implementation plan. The effect of this final rule will be to extend the permitting and registration deadlines for true minor sources in the oil and natural gas sector.

EPA coordinated with tribal environmental professionals on the development of the “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country” proposed rule, including the proposed amendments to extend the permitting and registration deadlines for true minor sources in the oil and natural gas sector located in Indian country. The coordination consisted of participating in monthly teleconferences. Specifically, on December 19, 2013, we presented an overview of the proposal and welcomed feedback and questions. On March 4, 2014, we met with representatives of the Ute Indian Tribe to hear their concerns regarding the proposed rule. On December 16, 2013, EPA mailed letters to over 600 tribal leaders to offer consultation. To assist tribes in deciding whether to accept our offer of consultation, we held a conference call on January 6, 2014, during which EPA provided an overview of the proposed changes and answered questions. We did not receive any requests for consultation from tribal governments in response to our letters offering consultation. However, prior to mailing the consultation letters, EPA began consulting with two tribes. Senior EPA officials consulted with the elected Ute Indian Tribe tribal leader and other members of the Ute Indian Tribe, including business committee members, on August 27, 2013, September 12, 2013, March 4, 2014, and March 21, 2014. Senior EPA officials also consulted with the designated representatives of the elected leaders of the Ute Indian Tribe and the Three Affiliated Tribes on July 26, 2013.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA has not considered the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in
Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This final rule will extend the true minor source permit deadlines for oil and natural gas sources under the Indian Country Minor NSR Program. EPA recognizes that this will result in some sources not installing air pollution controls that might otherwise have been required by a permit, but believes that any negative impacts on air quality associated with such activities will not be significant and that the practical need for the extension justifies any such impacts in the near term. Many new, modified and reconstructed sources in Indian country will have to meet the requirements of the Agency's oil and natural gas NSPS. The NSPS covers most emission sources in the production segment of the oil and natural gas sector, including completions of hydraulically fractured gas wells, storage vessels, compressors, and pneumatic controllers. Sources constructed, modified or reconstructed after August 23, 2011, must comply with the requirements of the NSPS. The NSPS will be fully implemented in 2015. Thus, the NSPS will help protect air quality during the extension. Moreover, the permitting extension applies only to true

minor sources; the requirement that major sources and synthetic minor sources obtain pre-construction permits in Indian country is not affected.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective [*insert date 30 days after date of publication in the Federal Register*].

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by [*insert date 60 days after date of publication in the Federal Register*]. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. Under section 307(b) (2) of the Clean Air Act, the requirements of this final action may not be challenged later in civil or

criminal proceedings brought by us to enforce these requirements.

VII. Statutory Authority

The statutory authority for this action is provided by sections 101, 110, 112, 114, 116 and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7410, 7412, 7414, 7416 and 7601).

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practices and procedures, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 22, 2014.

Gina McCarthy,
Administrator.

Therefore, 40 CFR part 49 is amended as follows:

PART 49 – [AMENDED]

1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In §49.151, revise paragraphs (c)(1)(iii)(A) and (c)(1)(iii)(B) to read as follows:

§49.151 Program overview.

* * * * *

(c) * * *

(1) * * *

(iii) * * * (A) If you own or operate an existing true minor source in Indian country (as defined in 40 CFR 49.152(d)), you must register your source with the reviewing authority in your area by March 1, 2013. If your true minor source is not an oil and natural gas source, and you commence construction after August 30, 2011, and before September 2, 2014, you must also register your source with the reviewing authority in your area within 90 days after the source begins operation. If your true minor source is an oil and natural gas source, and you commence construction after August 30, 2011, and before March 2, 2016, you must register your source with the reviewing authority in your area within 90 days after the source begins operation. You are exempt from these registration requirements if your true minor source is subject to §49.138.

(B) If your true minor source is not an oil and natural gas source and you wish to begin construction of a new true minor source or a modification at an existing true minor source on or after September 2, 2014, you must first obtain a permit pursuant to §§49.154 and 49.155 (or a general permit pursuant to §49.156, if applicable). If your true minor source

is an oil and natural gas source and you wish to begin construction of a new true minor source or a modification at an existing true minor source on or after March 2, 2016, you must first obtain a permit pursuant to §§49.154 and 49.155 (or a general permit pursuant to §49.156, if applicable). The proposed new source or modification will also be subject to the registration requirements of §49.160, except for sources that are subject to §49.138.

* * * * *

3. In §49.160, revise paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) to read as follows:

§49.160 Registration program for minor sources in Indian country.

* * * * *

(c) * * *

(1) * * *

(i) If you own or operate an existing true minor source (as defined in 40 CFR 49.152(d)), you must register your source with the reviewing authority by March 1, 2013.

(ii) If your true minor source is not an oil and natural gas source and you commence construction after August 30, 2011, and before September 2, 2014, you must register your source with the reviewing authority within 90 days after the source begins operation. If your true minor source is an oil and natural gas source, and you commence construction after August 30, 2011, and before March 2, 2016, you must register your source with the reviewing authority within 90 days after the source begins operation.

(iii) If your true minor source is not an oil and natural gas source, and you commence construction or modification of your source on or after September 2, 2014, and your source is subject to this rule, you must report your source's actual emissions (if available) as part of your permit application and your permit application information will

be used to fulfill the registration requirements described in §49.160(c)(2). If your true minor source is an oil and natural gas source, and you commence construction or modification of your source on or after March 2, 2016, and your source is subject to this rule, you must report your source's actual emissions (if available) as part of your permit application and your permit application information will be used to fulfill the registration requirements described in §49.160(c)(2).

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[FR Doc. 2014-14030 Filed 06/13/2014 at 8:45 am; Publication Date: 06/16/2014]